

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA**

In re

**DON KEITH FERGUSON, and  
DEB RAE FERGUSON,**

Debtors.

Case No. **04-60669-7**

**O R D E R**

At Butte in said District this 22<sup>nd</sup> day of March, 2006.

In this Chapter 7 bankruptcy, after due notice, a hearing was held March 21, 2006, in Billings on Debtors “Motion to Withdraw From Bankruptcy” filed February 21, 2006<sup>1</sup>, together with the objections thereto by the United States Trustee, the Chapter 7 Trustee and Wells Fargo Bank. Neal G. Jensen, Assistant United States Trustee, appeared at the hearing as did the Chapter 7 Trustee, Darcy Crum. Additionally, attorney Matthew Braukmann appeared on behalf of Wells Fargo Bank. No appearance was made by Debtors.

Debtors filed, *in propria persona*, a voluntary Chapter 13 bankruptcy petition on March 15, 2004, thereby commencing the instant case. The Chapter 13 Trustee filed a motion to convert on April 1, 2004, seeking to convert this case to Chapter 7 of the Bankruptcy Code arguing that Debtors had failed to file a Chapter 13 plan within fifteen days of their petition date as required by 11 U.S.C. § 1321 and F.R.B.P. 3015, and that Debtors had failed to file a

---

<sup>1</sup> Debtors filed a second “Motion to Withdraw From Bankruptcy” on March 2, 2006, which Motion appears to be an exact duplicate of the Motion filed February 21, 2006, except the March 2, 2006, Motion is dated February 28, 2006, while the February 21, 2006, Motion is dated February 18, 2006.

Statement of Financial Affairs as required by 11 U.S.C. § 521 and F.R.B.P. 1007. After Debtors failed to timely respond to the Trustee's motion to convert, the Court entered an Order converting this case to Chapter 7 of the Bankruptcy Code on April 15, 2004.

The record reflects that Debtors may have failed to appear at the originally scheduled § 341(a) meeting of creditors scheduled for May 25, 2004, prompting the original Chapter 7 Trustee, Craig Martinson,<sup>2</sup> to continue the § 341(a) meeting of creditors and file a "Motion to Compel Attendance and Motion for Turnover of Documents". By Order entered June 2, 2004, the Court compelled Debtors to attend a rescheduled § 341(a) meeting of creditors to be held June 17, 2004. For reasons unknown to the Court, Debtors' § 341(a) meeting of creditors was again continued to July 20, 2004.

On January 28, 2005, the United States Trustee ("UST"), after seeking and being granted extensions of the complaint bar date, filed a Complaint against Debtors seeking the denial of Debtors' discharge under 11 U.S.C. § 727(a)(2), (4) and (6). Debtors filed a response to the UST's Complaint on February 10, 2005, entitled "Notice and Demand". The Court could not determine the substance, if any, of the Debtors' legal argument, nor could the Court ascertain the relief the Debtors' were requesting. Nevertheless, the Court treated the Debtors' Notice and Demand as an answer and set the matter for a telephonic pretrial scheduling conference.

Debtors failed to make themselves available for the telephonic pretrial scheduling conference. Thus, the Court proceeded with the February 16, 2005, conference, establishing deadlines and a trial date that would govern the Adversary Proceeding. The Court, however, also

---

<sup>2</sup> Craig Martinson resigned as Trustee on March 11, 2005, and Darcy Crum was subsequently appointed.

gave Debtors until March 1, 2005, to inform the Court of any pre-existing conflicts and to inform the Court if they wished to have an additional pretrial scheduling conference scheduled by the Court. Debtors did not advise the Court of any conflicts, but instead filed on February 28, 2005, a “Response to United States Trustee’s Complaint to Deny Debtor’s [sic] Discharge”.

Following the above events, the UST filed a motion for summary judgment on March 18, 2005. The UST’s motion for summary judgment was granted without any opposition from Debtors on April 1, 2005. A Judgment denying the discharge of Debtors’ debts was entered on that same date. Debtors returned the Court’s April 1, 2005, Order and Judgment to the Court on April 8, 2005, with the following handwritten notation on each document: “Refused for cause without recourse and without dishonor to me– Donald Keith Ferguson. Man of God.” The Court’s Order and Judgment were accompanied by an array of other unrelated documents, including a Will and Testament and another document discussing “organic” law.

Meanwhile, Debtors’ Chapter 7 bankruptcy was proceeding much along the same lines as the Adversary Proceeding against Debtors. Debtors filed an untitled document on January 18, 2005, indicating that they could present evidence documenting the real holder of the land involved in this case and that they could show that the debt against them “should be discharged as per banking regulation and charter and the Uniform Commercial Code.” Debtors’ January 18, 2005, request was denied by the Court on that same date for Debtors’ failure to follow proper procedure and provide proper notice to parties in interest.

The case proceeded. For instance, Wells Fargo Bank filed a motion to modify stay on January 6, 2006, and the Chapter 7 Trustee filed on February 15, 2006, a motion for authority to sell property free and clear of liens and void homestead and a motion for order requiring Debtors

to vacate property. Following a hearing held January 24, 2006, Wells Fargo Bank, after negotiations with the Trustee, withdrew its motion to modify stay at a continued hearing held February 21, 2006.<sup>3</sup> On February 27, 2006, the Court granted the Trustee's motion for authority to sell property free and clear of liens and void homestead and motion for order requiring Debtors to vacate property.

In the interim, Debtors (1) returned the Court's January 24, 2006, hearing Order with the notation "Refused for Cause Without Dishonor and Without Recourse to Me"; (2) filed an "Actual Notice of Fault, Default and Default Judgement"; (3) returned the Court's Order of February 16, 2006, again with the notation that it was "Refused for Cause Without Dishonor and Without Recourse to Me"; (4) filed the pending Motion to Withdraw from Bankruptcy; (5) filed the second Motion to Withdraw from Bankruptcy on March 2, 2006; (6) filed a second "Actual Notice of Fault, Default and Default Judgement"; (7) returned the Court's February 21, 2006, Order with the notation that it was "Timely Refused for Cause Without Dishonor and Without Recourse to Me"; (8) returned Wells Fargo Bank's Response in Opposition to Debtors' Motion to Withdraw from Bankruptcy with the notation that it too was "Refused for Cause Without Dishonor and Without Recourse to Me"; (9) returned the Chapter 7 Trustee's Objection to Debtors' Motion to Withdraw from Bankruptcy with the notation that it was "Refused for Cause Without Dishonor and Without Recourse to Me"; (10) filed a third "Actual Notice of Fault, Default and Default Judgement"; (11) filed a fourth "Actual Notice of Fault, Default and Default Judgement"; (12) filed a fifth "Actual Notice of Fault, Default and Default Judgement"; (13)

---

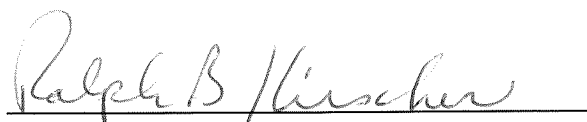
<sup>3</sup> Debtors did not appear at either the January 24, 2006, or the February 21, 2006, hearings.

filed a “Second Notice of Withdrawal of Signature” indicating that Debtors were still withdrawing their names from the bankruptcy petition; and finally, (14) filed a sixth “Actual Notice of Fault, Default and Default Judgement”.

Debtors do not have an absolute right to dismiss their Chapter 7 bankruptcy proceeding under 11 U.S.C. § 707(b). Rather, to dismiss a Chapter 7 case, Debtors must come forward and show good cause for the dismissal and must show that the dismissal will not result in prejudice to creditors. By failing to appear at the hearing, Debtors have failed that burden.<sup>4</sup> Moreover, Wells Fargo Bank demonstrated that it would suffer plain legal prejudice if this case were dismissed. Accordingly,

IT IS ORDERED that Debtors’ Motion to Withdraw From Bankruptcy filed February 21, 2006, is DENIED WITH PREJUDICE; Debtors’ Motion to Withdraw From Bankruptcy filed March 2, 2006, is DENIED WITH PREJUDICE; Debtors’ Second Notice of Withdrawal of Signature filed March 15, 2006, is DENIED WITH PREJUDICE; and the Trustee is directed to proceed with the liquidation of Debtors’ assets and the distribution of the proceeds therefrom.

BY THE COURT

A handwritten signature in cursive script, reading "Ralph B. Kirscher", written over a horizontal line.

HON. RALPH B. KIRSCHER  
U.S. Bankruptcy Judge  
United States Bankruptcy Court  
District of Montana

---

<sup>4</sup> Debtors’ frivolous and incomprehensible pleadings do not in any way begin to satisfy Debtors’ burden under 11 U.S.C. § 707(b).